

256

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M No.13314 of 2017
Date of Decision: 23.02.2018**

Gurjant Singh

.....Petitioner

Vs

State of Punjab and another

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Atul Goyal, Advocate
for the petitioners.

Mr. Randhir Singh Thind, DAG, Punjab.

Mr. Parvez Chugh, Advocate
for respondent No.2.

RAJ MOHAN SINGH, J. (Oral)

[1] Prayer in this petition is for quashing of FIR No.61 dated 04.04.2009 registered under Sections 341/380/427/506/148/149 IPC at Police Station Samrala, District Ludhiana as well as all the subsequent proceedings arising therefrom on the basis of compromise qua the petitioner.

[2]. On 22.01.2018, following order was passed by this Court:-

"This is a petition for quashing of FIR No.61 dated 04.04.2009 under Sections 341, 380, 427, 506, 148, 149 IPC registered at Police Station Samrala District Ludhiana on the basis of compromise.

It appears that the police has prepared an untraced report dated 02.09.2009. Co-accused Sukhwinder Singh @ Sukha filed CRM-M No.9398 of 2012 and FIR was quashed on the basis of compromise qua the aforesaid co-accused Sukhwinder Singh @ Sukha on 13.03.2013. Petitioner also filed CRM-M No.10760 of 2014 and the same was got dismissed as withdrawn on the premise that the police has prepared a closure report to cancel the FIR. Liberty was given to the petitioner that in case cancellation report is not accepted by the trial Court, petitioner may file fresh petition for quashing the FIR on the basis of compromise vide order dated 29.01.2015. Thereafter, one more petition CRM-M No.13065 of 2016 was also filed by the petitioner and the same was dismissed as withdrawn with a liberty to have recourse to other remedies available to the petitioner under the law.

Learned counsel for the petitioner submits that since no cancellation/untraced report has been filed in the Court, therefore, in view of order dated 29.01.2015, filing of fresh petition for quashing of FIR on the basis of compromise is the only recourse available to the petitioner. The fact remains whether police has filed cancellation/untraced report in the Court or not? The FIR is of the year 2009.

Head Constable Baljinder Singh present in Court is not in a position to apprise the Court about the status of cancellation/untraced report. The Investigating Officer of the case is one ASI Gulzari Lal who has opted not to attend the Court.

Let an explanation of the Investigating Officer

be called for as to why he has not come to attend the Court today. The case is being adjourned unnecessarily for which the Investigating Officer can be burdened with costs of adjournment.

Let the explanation be furnished before the adjourned date.

Adjourned to 23.02.2018.”

[3]. Today, ASI Amrik Singh has come present and stated that ASI Guljari Lal has been transferred from the police station. Complainant in the present case was involved in some other case, in which he has already been declared as proclaimed offender. Statement of the complainant could not be recorded for the purposes of filing cancellation/untraced report in this case after rejection of earlier untraced report by the competent Court.

[4]. Learned counsel for the petitioner submitted that in case of co-accused Sukhwinder Singh @ Sukha, CRM-M No.9398 of 2012 was filed for quashing of FIR on the basis of compromise. The said FIR was quashed on the basis of compromise qua Sukhwinder Singh @ Sukha, in which complainant was allowed to appear through his attorney i.e. his father for making statement before the trial Court.

[5]. In the present case also, complainant has been impleaded through power of attorney. Vide order dated 24.04.2017. both the parties were directed to appear before the

Illaq Magistrate/concerned Court in the context of making statements with regard to genuineness of the compromise in question. Both the parties have appeared before the trial Court on 04.05.2017. Father of the complainant namely Kuldeep Singh has appeared as special power of attorney of his son Jagdeep Singh. Since quashing has already been ordered qua Sukhwinder Singh @ Sukha on the basis of statement made by special power of attorney of the complainant, I deem it appropriate to consider the statement made by Kuldeep Singh to be sufficient for the purposes of quashing of FIR on the basis of compromise in this case as well.

[6]. Learned counsel for the petitioner relied upon **Jayrajsinh Digvijaysinh Rana Vs. State of Gujarat and another, 2012 (4) R.C.R. (Criminal) 589** and contended that the criminal proceedings in an FIR can be quashed at the instance of one of the accused on the basis of compromise.

[7]. Learned counsel for the petitioner further relied upon **Parambir Singh Gill Vs. Malkiat Kaur, 2010 (1) R.C.R. (Criminal) 256** and the decision rendered by this Court in **CRM-M No. 18632 of 2014** titled **Ashok Kumar Garg and another Vs. State of Punjab and others**, decided on 07.08.2015, on the aforesaid proposition.

[8]. In view of the aforesaid, I proceeded to decide this case

on behalf of the petitioner.

[9]. The extent and sweep of inherent powers of the High Court under Section 482 Cr.P.C., for quashing criminal prosecution on merits as well as on the basis of compromise between the accused and the victim remained question of interpretation since long. The Hon'ble Apex Court after due consideration of judgments in **Madhu Limaye vs. State of Maharashtra, AIR 1978 Supreme Court 47**, **Bhajan Lal vs. State of Haryana and others, AIR 1992 Supreme Court 604** and **State of Karnataka vs. L. Muniswamy and others, AIR 1977 Supreme Court 1489**, has summed up the controversy in **State through Special Cell, New Delhi vs. Navjot Sandhu @ Afshan Guru and others, 2003(2) RCR (Cr.) 860 (SC)**. The legal position summed up in the said judgment is in the following manner:-

“Thus, the law is that Article 227 of the Constitution of India gives the High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any Act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used, to meet

the ends of justice. They can be used to interfere even with an interlocutory order. However, the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, when the High Court itself does not in terms purport to exercise any such discretionary power. It is settled law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate courts and tribunals within the bound of their authority and not to correct mere errors. Further, where the statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was not meant to circumvent statutory law. It is settled law that the jurisdiction under Article 227 could not be exercised "as the cloak of an appeal in disguise.

Section 482 of the Criminal Procedure Code starts with the words "Nothing in this Code". Thus the inherent jurisdiction of the High Court under Section 482 of the Criminal Procedure Code can be exercised even when there is a bar under Section 397 or some other provisions of the Criminal Procedure Code. However, as is set out in Satya Narayan Sharma's case (supra) this power cannot be exercised if there is a statutory bar in some other enactment. If the order assailed is purely of an interlocutory character, which could be corrected in exercise of revisional powers or appellate powers the High Court must refuse to exercise its inherent power. The inherent power is to be

used only in cases where there is an abuse of the process of the Court or where interference is absolutely necessary for securing the ends of justice. The inherent power must be exercised very sparingly as cases which require interference would be few and far between. The most common case where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed because they are initiated illegally, vexatiously or without jurisdiction. Most of the cases set out herein above fall in this category. It must be remembered that the inherent power is not to be resorted to if there is a specific provision in the Code or any other enactment for redress of the grievance of the aggrieved party. This power should not be exercised against an express bar of law engrafted in any other provision of the Criminal Procedure Code. This power cannot be exercised as against an express bar in some other enactment.”

[10]. Full Bench of this Court in **Kulwinder Singh and others vs. State of Punjab and another, 2007(3) RCR (Crl.) 1052** considered the scope of powers under Section 482 Cr.P.C., to hold that High Court has powers to quash prosecution in order to achieve ends of justice and to prevent abuse of process of law. These powers are not limited to matrimonial dispute alone, rather these powers are unlimited. However these powers are to be exercised very sparingly and with utmost care and caution. There is no statutory bar which can affect the inherent powers of High Court under Section 482

Cr.P.C. The powers under Section 482 Cr.P.C., is to be exercised Ex-Debitia, justitia to prevent abuse of process of Court.

[11]. In exercise of inherent powers under Section 482 Cr.P.C., criminal proceedings are not to be quashed where the offence is heinous in nature. Proceedings can only be quashed where the issue is overwhelmingly and predominantly of civil profile arising out of commercial, financial, mercantile and civil or matrimonial nature. In a way dispute may involve wrong which is basically private or personal in nature and the parties have redressed the same by entering into compromise. In **Gian Singh vs. State of Punjab and another 2012(4) RCR (Crl.) 543**, the Hon'ble Supreme Court considered necessary imports of all previous precedents and observed in the following manner:-

“57. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash

the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominatingly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression

and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

[12]. Taking into consideration totality of facts and circumstances, this Court is of the view that the case can be considered for quashing of FIR along with subsequent proceedings arising therefrom on the basis of compromise. Resultantly, FIR No.61 dated 04.04.2009 registered under Sections 341/380/427/506/148/149 IPC at Police Station Samrala, District Ludhiana and all the subsequent proceedings arising therefrom are hereby quashed qua the petitioner.

February 23, 2018

Prince

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No